

DEPARTMENT RECOMMENDATIONS FOR BOARD ACTION ON CBM RULEMAKING

The Department has developed recommendations for each of the provisions of the proposed rules. The recommendations follow in the order established by the rule notice.

Amendment of ARM 17.30.670 NUMERIC STANDARDS FOR ELECTRICAL CONDUCTIVITY (EC) AND SODIUM ADSORPTION RATIO (SAR)

Sections (6), (7) and (8) of this rule are proposed for amendment.

Section (6) of this provision would designate EC and SAR as harmful parameters, thus establishing significance thresholds at a portion of the numeric water quality standard. The Department could not authorize a discharge exceeding 10% of the numeric standard, without an authorization to degrade. If the ambient water quality is 40% of the standard or above, no additional discharge could occur without an authorization to degrade.

The Department recommends adoption of section (6) of this rule.

The intent of Montana's nondegradation rule is to protect the increment of "high quality" water that exists between ambient water quality and a numeric water quality standard. The Board has a duty to protect that high quality water where it does exist, including waters such as the Tongue River and Rosebud Creek in the Powder River Basin.

When the Board established numeric standards for EC and SAR, the Department recommended that the Board leave the narrative nondegradation thresholds in place. The Department argued that the waters of the Powder River Basin sometimes exceed the water quality standard, so a conventional approach to nondegradation was not justified. The Board found that the Department's argument was true for the Powder River, but not the Tongue. The Board requested, for further consideration, Department review of the nondegradation designation, and passed a two-part motion to adopt the nondegradation approach previously adopted in 2003. The first part was to adopt the recommended approach that is now in rule; the second component was to "... direct the Department (to) initiate rulemaking on a different method"

The current treatment of EC and SAR as narrative standards for the purposes of nondegradation is inconsistent. All other parameters that have numeric water quality standards are classified as carcinogenic, toxic or harmful for purposes of significance reviews and the Department feels that EC and SAR should be treated in a similar manner. The Department feels that further consideration and the evidence submitted in the current rulemaking supports treating EC and SAR as harmful parameters for the purposes of nondegradation review.

Section (7) of this rule contains the requirement for the use of flow-based dilution when calculating MPDES permit discharge requirements. The proposed rule deletes this requirement and adds a requirement to use the 7Q10 flow, a flow value associated with a river's lowest typical flow, to calculate permits.

The Department recommends that the Board adopt the rule deleting the requirement to use a flow-based permit calculation method, but that the Board NOT adopt the new requirement to use the 7Q10 flow. The MPDES section in Permitting Division has the discretion to use either method for calculating approved discharges for other dischargers, and has used both. Eliminating the requirement to use a flow-based approach, and not replacing it with the 7Q10 requirement, will preserve Department discretion to use either, or a combination of the two, and make the analysis and calculation of CBM produced water permits consistent with the other MPDES efforts.

Section (8) of this rule contains the nonseverability provisions of the existing rule. The proposed rule deletes this provision.

The Department recommends that the Board adopt this provision, which would result in deletion of the nonseverability clause.

The nonseverability requirement was originally recommended by the Department and adopted by the Board at industry's request to prevent a situation in which the narrative nondegradation criteria was struck down in a court of law, leaving only the numeric water quality standards in place. Since the Department is now recommending replacement of the narrative nondegradation threshold with a conventional numeric approach, the nonseverability provision is not necessary.

Amendment if 17.30.1202 Definitions

The Department recommends that the Board NOT adopt changes to the definitions. The proposed changes implement the technology based controls and treatment requirements in the new rules which follow. The Department is recommending that those rules not be adopted.

New Rules I through X, including zero discharge, technology based control, treatment, and effluent guideline requirements.

The Department recommends that the Board NOT adopt the new rules requiring reinjection or treatment of CBM produced water to an established set of effluent limit guidelines.

Strict requirement of technology based effluent limits requires the Department to analyze and establish the technical and financial feasibility of achieving the limits. The record before the Board does not establish the technological or economic feasibility of the proposed limits.

The Department is willing to consider whether there exists a set of effluent limitations that is economically, environmentally, and technically feasible. The Department recommends that the Board either (1) reject the effluent limitations as proposed in the notice of hearing on these rules and request the Department to return to the Board, after performing the above analysis, with proposed effluent limitations and documentation of the technical, economic, and environmental feasibility and cost-effectiveness of those effluent limitations or (2) issue a supplemental notice to take further evidence regarding the economic, environmental, and technical feasibility of treatment to determine whether there are effluent limitations that are economically, technically, and environmentally feasible, and, if so, identify those limitations.